

1 Isaac D. Zorea
2 Law Office of Isaac Derek Zorea
3 P.O. Box 210434
4 Anchorage, AK 99521
(907) 677-3779
(907) 644-2802 facsimile

5
6 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

7 CAROLYN MITCHELL,)
8 Plaintiff,)
9 vs.)
10 ANCHORAGE POLICE DEPARTMENT and the)
11 MUNICIPALITY OF ANCHORAGE, a)
12 municipal corporation, WALTER MONEGAN,)
13 Officer HENIKMAN, and Officer J. VOSS,)
Defendants.)

14 Case No. 3:05-cv-00273-JWS

15 **PLAINTIFF'S OPPOSITION TO DEFENDANTS'**
MOTION FOR RECONSIDERATION

16 On December 26, 2007, at docket 76, this Court issued its Order and Opinion
17 concerning whether Carolyn Mitchell was falsely arrested on May 8, 2004. In its
18 opinion, the Court identified the legal issues that defendants raised in its response to
19 Mitchell's motion for reconsideration. The Court acknowledged defendants' reliance
20 on Deal v. State, and Coleman v. State, for the proposition that Officers Henikman
21 and Voss "had an affirmative legal duty" to detain Mitchell as they did. Doc. 76, at 2.
22 Nonetheless, the Court's analysis held that Deal and Coleman were "clearly
23 distinguishable from the case at bar." Id., at 3.

24
25 After providing an analysis into why defendants' legal arguments failed to
26

1 persuade, the Court issued its ruling. The Court held that “the facts of this case do
2 not involve the mere stopping and questioning of plaintiff.” Id., at 4. Continuing the
3 Court observed that “it is undisputed that defendants held plaintiff at gunpoint,
4 handcuffed her, searched her person and belongings, and kept her in custody for
5 about 30 minutes, without asking her any questions related to the investigation of the
6 armed robbery.” Id. Further the Court observed that “it is also undisputed that
7 plaintiff was cooperative and was not perceived as a safety concern by the
8 defendants.” Id. Based on the undisputed facts, the Court held that “plaintiff has met
9 her burden of showing that there are no genuine disputes of material fact and she is
10 entitled to judgment as a matter of law finding that defendants Henikman and Voss
11 falsely arrested her on May 8, 2004.” Id.

14 On January 15, 2008, at docket 79, defendants “move this Court to reconsider
15 its Order and Opinion (Dkt. 76) granting plaintiff summary judgment on the issue of
16 false arrest.” Doc. 79, at 1. In its motion, however, defendants merely reargue the
17 same legal theories already presented to this Court on at least four separate
18 occasions. In its motion, defendants presented no intervening change in the
19 controlling law of this case. Neither did the defendants submit any newly discovered
20 evidence, such as would warrant reconsideration. Rather than provide legitimate
21 grounds for reconsideration, the defendants merely provides this Court with “an
22 Alaska perspective on the U.S. Supreme Court and Ninth Circuit case law cited in
23 Defendants’ briefs.” Id., at 5.

26 The defendants motion for reconsideration utterly fails, and must be denied.

1 The motion filed by defendants at docket 79 bears the caption of motion for
2 reconsideration, but it is nothing more than a newly presented motion opposing
3 summary judgment.
4

5 Federal Rules of Civil Procedure 59(e) permits a motion for reconsideration,
6 but such motions serve a narrow purpose. Waltman v. International Paper Co., 875
7 F.2d 468, 473 (5th Cir. 1989). “Reconsideration is appropriate if the district court (1)
8 is presented with newly discovered evidence, (2) committed clear error or the initial
9 decision was manifestly unjust, or (3) if there is an intervening change in controlling
10 law.” School Dist. No. 1J, Multnomah County v. AcandS, Inc., 5 F.3d 1255, 1263,
11 (9th Cir. 1993).
12

13 Applying the standard adopted by the Ninth Circuit, defendants’ motion for
14 reconsideration must be denied. First, defendants’ motion does not present newly
15 discovered evidence. It is true that defendants submitted four new affidavits to its
16 motion for reconsideration, but these affidavits cannot be deemed “new evidence.”
17 The Ninth Circuit stated that the “overwhelming weight of authority is that failure to
18 file documents in an original motion or opposition does not turn the late filed
19 documents into ‘newly discovered evidence.’” Id. See also: Trentacosta v. Frontier
20 Pac. Aircraft Indus., Inc., 813 F.2d 1553, 1557 & n. 4 (9th Cir. 1987). As such, the
21 affidavits submitted with defendants’ motion must be ignored since they are merely
22 opinions from law enforcement officers that could have been presented with
23 defendants earlier filed opposition to plaintiff’s partial summary judgment.
24
25

26 Additionally, it is clear that defendants’ motion for reconsideration does not
27

1 cite to any “intervening changes to controlling law.” To the contrary, defendants’
2 motion quite stubbornly holds to the same legal arguments already argued to this
3 Court. As such, this Court should not be persuaded by any of the legal theories
4 presented by defendants’ new motion, since none of these theories have changed.
5

6 Finally, defendants’ motion fails to show that this Court “committed clear
7 error” or that “the initial decision was manifestly unjust.” The defendants’ motion
8 argues that the “Court overlooked undisputed facts in the record,” but it fails to
9 specifically identify what “undisputed facts,” the Court allegedly overlooks. Doc. 79,
10 at 2. Similarly, defendants’ motion argues that the Court “failed to analyze the
11 difference between an ‘investigatory stop’ and an ‘arrest’ under Alaska and federal
12 law,” but its argument is without merit. Id. In its original Order and Opinion, at
13 docket 72, the Court devoted three pages of analysis into distinguishing between an
14 investigatory stop and an arrest. Doc. 72, at 4-7. Nothing presented in defendants’
15 motion for reconsideration provides any authority that differs from the analysis
16 provided by the Court on that subject.
17

18 Taken in its entirety, defendants’ motion for reconsideration is simply a
19 continuation of its opposition to plaintiff’s motion for partial summary judgment.
20 Defendants fail to identify upon what grounds it seeks reconsideration, they provide
21 the Court with nothing that has been newly discovered, nor do they identify any
22 intervening change in controlling law.
23

24 In support of its motion for reconsideration, the defendants did submit new
25 evidence from law enforcement officers. However, the new evidence submitted by
26
27

1 defendants should have no sway on this Court since the evidence could have been
2 submitted as an attachment to defendants' opposition to partial summary judgment.

3 Further, the evidence provided by Captain Miller, Agent Payne, Trooper
4 Leveque, and Officer Daily provide nothing that is relevant to Mitchell's case.
5 Captain Miller's affidavit is utterly self-serving, and useless as persuasive evidence
6 before this Court. As an employee of the Municipality, defendant in this suit,
7 Captain Miller's testimony is nothing more than a declaration of innocence by an
8 employee of a party to this litigation. It is incomprehensible that Captain Miller, an
9 agent of the executive branch of government, makes such a bold challenge to the
10 authority of this federal court. Captain Miller's statement that "[t]o me, it seems
11 clear this was no arrest under any definition, but rather, an appropriate detention to
12 investigate a crime," (Doc. 80, at 2-3) can have no conceivable persuasive effect
13 upon this Court.
14

15 Conclusion

16 This Court is vested with the duty, and authority, to determine if Mitchell has
17 met her burden of showing that there are no genuine disputes of material facts, and if
18 she is entitled to judgment as a matter of law concerning whether defendants
19 Henikman and Voss falsely arrested her on May 8, 2004. This Court executed its
20 duty, and decided as a matter of law that Mitchell had been falsely arrested. The
21 defendants have provided nothing to warrant a reversal of this Court's decision to
22 grant her partial summary judgment on the issue of false arrest. Mitchell respectfully
23 requests that this Court DENY defendants' motion for reconsideration.
24

1 Respectfully submitted this 20th day of February 2008.

2 S/ Isaac Zorea
3 Law Offices of Isaac D Zorea
4 P.O. Box 210434
5 Anchorage, AK 99521
6 907-830-1385
7 907-677-3779
8 Eyedz@gci.net

9 Certificate of Service

10 I hereby certify that on February 20, 2008
11 I electronically filed the foregoing with
12 the Clerk of Court using the CM/ECF
13 system which sent notification to the
14 following:

15 Joyce Weaver Johnson

16 and I hereby certify that I have mailed by
17 United States Postal Service the document
18 to the following non CM/ECF participants:

19 none.

20 Dated this 20th day of February 2008, at Anchorage, Alaska.

21 S/ Isaac Zorea
22 Law Offices of Isaac D Zorea
23 P.O. Box 210434
24 Anchorage, AK 99521
25 907-830-1385
26 907-677-3779
27 Eyedz@gci.net